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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

BIKRAM'S YOGA COLLEGE OF INDIA, L.P., a California limited partnership; BIKRAM CHOUDHURY, an individual, Plaintiffs, v. EVOLATION YOGA, LLC, a New York limited liability company; MARK DROST, and individual; ZEFEA SAMSON, an individual; and DOES 1 through 10, inclusive, Defendant.	Case No. CV-11-05506-ODW (SSx) Hon. Otis D. Wright, II Courtroom 11 **[PROPOSED] STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW** [Motion for Partial Summary Judgment filed concurrently] Date: December 10, 2012 Time: 1:30 p.m. Courtroom: 11 – Spring Street Complaint filed: July 1, 2011 Trial Date: January 29, 2013
EVOLATION YOGA, LLC, a New York limited liability company; MARK DROST, and individual; and ZEFEA SAMSON, an individual, Counterclaimants, v. BIKRAM'S YOGA COLLEGE OF INDIA, L.P., a California limited partnership; BIKRAM CHOUDHURY, an individual, Counterclaim Defendants.	

After consideration of the papers in support of and in opposition to Defendants and Counterclaimants Evolation Yoga LLC, Mark Drost and Zefea Samson's (the "Evolation Parties") Motion for Partial Summary Judgment, the Court makes the following findings of uncontroverted facts and conclusions of law:

UNCONTROVERTED FACTS

No.	**Uncontroverted Fact**	**Supporting Evidence**
1	Bikram Choudhury developed a brand of yoga known as "Bikram's Basic Yoga System."	• Maier Decl., Exh. A at ¶ 17.
2	Bikram's Basic Yoga System is a series of 26 yoga positions and two breathing exercises (the "Sequence") performed in precisely the same sequence, for precisely 90 minutes in a room heated to 105 degrees Fahrenheit.	• Maier Decl., Exh. A at ¶ 18. • Drost Decl., ¶ 3. • Samson Decl., ¶ 3.
3	Bikram Choudhury does not claim to have created any of the 26 poses or any of the two breathing exercises that comprise the Sequence.	• Maier Decl., ¶ 9. • Drost Decl., ¶ 3. • Samson Decl., ¶ 3.
4	Mark Drost, Zefea Samson, and Evolation LLC offer a few different types of yoga classes, including classes that utilize the 26 poses and two breathing exercises that comprise the Sequence.	• Drost Decl., ¶¶ 8-10, • Samson Decl., ¶¶ 8-10.
5	The U.S. Copyright Office has issued nine certificates of copyright registration for works authored, created, and/or attributed to Bikram Choudhoury.	• Maier Decl., Exh A at ¶¶ 31-34. • Maier Decl., ¶ 3, Exh. B.

No.	Uncontroverted Fact	Supporting Evidence
6	The U.S. Copyright Office issued Certificate of Copyright Registration No. TX-170-160 to Bikram Choudhoury in 1979 for a work of text entitled Bikram's Beginning Yoga Class	• Maier Decl., ¶ 3, Exh. B. • Maier Decl., Exh. C.
7	The U.S. Copyright Office issued Certificate of Copyright Registration No. TX-5-259-325 to Bikram Choudhoury in 2000 for a work of text entitled Bikram's Beginning Yoga Class (2nd Edition)	• Maier Decl., ¶ 3, Exh. B. • Maier Decl., Exh. D.
8	The U.S. Copyright Office issued Certificate of Copyright Registration No. TX-5-624-003 to Bikram Choudhoury in 2002, which supplemented TX-170-160 for Bikram's Beginning Yoga Class	• Maier Decl., ¶ 3, Exh. B. • Maier Decl., Exh. E.
9	The U.S. Copyright Office issued Certificate of Copyright Registration No. TX-5-499-662 to Bikram Choudhoury in 2002 for the sound cassette version of Bikram's Beginning Yoga Class	• Maier Decl., Exh. B
10	The U.S. Copyright Office issued Certificate of Copyright Registration No. TXu-1-022-657 to Bikram Choudhoury in 2002 for a work of text entitled Bikram's Yoga College of India Beginning Yoga Dialogue	• Maier Decl., Exh. B • Maier Decl., Exh. A at ¶ 33.

No.	**Uncontroverted Fact**	**Supporting Evidence**
11	The U.S. Copyright Office issued Certificate of Copyright Registration No. TXu-934-417 to Bikram Choudhoury in 2002 for a work of text entitled Bikram's Yoga College of India: Yoga Teacher Training Course: Curriculum Outline	• Maier Decl., Exh. B. • Maier Decl., Exh. A at ¶ 33.
12	The U.S. Copyright Office issued Certificate of Copyright Registration No. PA-1-053-335 to Bikram Choudhoury in 2002 for a motion picture entitled Yoga For Pregnancy	• Maier Decl., Exh. B. • Maier Decl., Exh. A at ¶ 33.
13	The U.S. Copyright Office issued Certificate of Copyright Registration No. TXu-1-323-218 to Bikram Choudhoury in 2006 for a work of text entitled Bikram's Advanced Yoga Class	• Maier Decl., Exh. B. • Maier Decl., Exh. A at ¶ 33.
14	The U.S. Copyright Office issued Certificate of Copyright Registration No. TX-6-555-860 to Bikram Choudhoury in 2006 for a work of text entitled Bikram Yoga	• Maier Decl., Exh. B
15	In 1979, Bikram Choudhury published a 211-page book entitled "Bikram's Beginning Yoga Class," which includes a description of the Sequence.	• Maier Decl., Exh. A at ¶ 31. • Maier Decl., Exh. C.
16	In 2000, Bikram Choudhury published a second edition of "Bikram's Beginning Yoga Class," which includes a description of the Sequence.	• Maier Decl., Exh. A at ¶ 31. • Maier Decl., Exh. D.

No.	Uncontroverted Fact	Supporting Evidence
17	In their complaint, the Bikram Parties refer to the Sequence as part of a system or method of yoga.	• Maier Decl., Exh. A at ¶¶ 17-23.
18	According to Bikram Choudhury, the 26 postures that comprise the Sequence "systematically work every part of the body, to give all internal organs, all the veins, all the ligaments, and all the muscles everything they need to maintain optimum health and maximum function."	• Maier Decl., Exh. G.
19	In Bikram's Beginning Yoga Class, Bikram Choudhury asserts: "From the experience of teaching over a million and a half students, I can confidently say that my system of Hatha Yoga is capable of helping you avoid, correct, cure, heal, or at least alleviate the symptoms of almost any illness or injury."	• Maier Decl., ¶ 11.
20	In Bikram's Beginning Yoga Class, Bikram Choudhury asserts: "I researched the diseases and the postures and after many years of research and verification, having used the methods taught to me by my guru and using modern medical measurement techniques, I arrived at the sequence of postures you will find in this book."	• Maier Decl., ¶ 10.

No.	Uncontroverted Fact	Supporting Evidence
21	Bikram Choudhury claims that Bikram's Basic Yoga System is capable of helping to avoid, correct, cure, heal and alleviate the symptoms of a variety of diseases and health issues.	• Drost Decl., ¶5 • Samson Decl., ¶5
22	According to Bikram Choudhoury, the intended benefits of Bikram's Basic Yoga System can only be derived if the yoga class is performed precisely as Bikram Choudhury developed it.	• Maier Decl., Exh. A at ¶ 18.
23	Bikram Choudhury forbids music to be played during classes that practice Bikram's Basic Yoga System.	• Drost Decl., ¶6 • Samson Decl., ¶6 • Maier Decl., Exh. G.
24	Registration Certificate TX-5-624-003 is a supplementary registration for Bikram's 1979 book entitled "Bikram's Beginning Yoga Class."	• Maier Decl., Exh. C. • Maier Decl., Exh. E.
25	Bikram Choudhury attempted to register a copyright for "Bikram's Asana Sequence" as a work of the performing arts in 2002.	• Maier Decl., Exh. F.
26	The U.S. Copyright Office did not issue a certificate of registration of a copyright for "Bikram's Asana Sequence" as a work of the performing arts.	• Maier Decl., Exh. B.

CONCLUSIONS OF LAW

1. "Courts may grant summary judgment in a party's favor upon all *or any part* of a party's claim." *U.S. v. Mohalla*, 545 F. Supp. 2d 1035, 1039 (C.D. Cal. 2008) (italics in original) (citing Fed. R. Civ. P. 56(a)).

2. "The standard and procedures for a motion for partial summary judgment are the same as for summary judgment of a claim." *U.S. v. Mohalla*, 545 F. Supp. 2d 1035, 1039 (C.D. Cal. 2008).

3. Summary judgment should be granted where the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a).

4. "Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed to secure the just, speedy and inexpensive determination of every action." *Celotex Corp. v. Catrett*, 477 U.S. 317, 327, 106 S. Ct. 2548, 2555 (1986).

5. "Copyrightability is often resolved on summary judgment because very often no issues of material fact are in dispute and the only task for the court is to analyze the allegedly copyrightable item in light of applicable copyright law." *Smith v. Hawken, Ltd. v. Gardendance, Inc.*, 2005 WL 1806369, *2 (N.D. Cal. July 28, 2005).

6. "Copyright is wholly a creature of statute, and the only rights that exist under copyright law are those granted by statute." *Sybersound Records, Inc. v. UAV Corp.*, 517 F.3d 1137, 1143-44 (9th Cir. 2008).

7. Federal copyright laws protect "original works of authorship" in the following eight categories: (1) literary works; (2) musical works; including any accompanying words; (3) dramatic works, including any accompanying music; (4) pantomimes and choreographic works; (5) pictorial, graphic, and sculptural works; (6) motion pictures and other audiovisual works; (7) sound recordings; and (8) architectural works. 17 U.S.C. § 102(a).

8. "In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work." 17 U.S.C. § 102(b).

9. "The mere fact that a work is copyrighted does not mean that every element of the work may be protected." *Feist Publications, Inc. v. Rural Telephone Service Co., Inc.*, 499 U.S. 340, 348, 111 S. Ct. 1282, 1289 (1991).

10. "Copyright law protects an author's expression; facts and ideas within a work are not protected." *Shaw v. Lindheim*, 919 F.2d 1353, 1356 (9th Cir. 1990).

11. "When a work describes how to perform a task (a function), there is no copyright protection for the knowledge (the useful art) thereby conveyed." *R.W. Beck, Inc. v. E3 Consulting, LLC,* 577 F.3d 1133, 1144 (10th Cir. 2009).

12. Due to the distinction between ideas and expression in copyright law, "every idea, theory, and fact in a copyrighted work becomes instantly available for public exploitation at the moment of publication; the author's expression alone gains copyright protection." *Golan v. Holder*, 132 S. Ct. 873, 890 (2012).

13. "[A] selection, coordination, or arrangement of exercise movements, such as a compilation of yoga poses, may be precluded from registration as a functional system or process in cases where the particular movements and the order in which they are to be performed are said to result in improvements in one's health or physical or mental condition. . . . While such a functional system or process may be aesthetically appealing, it is nevertheless uncopyrightable subject matter. " Copyright Office Statement of Policy, 77 Fed. Reg. 37605-37608 (June 22, 2012).

14. In order for a work to qualify as a copyrightable compilation under 17 U.S.C. § 103, the compilation must result in the creation of "an original work of authorship." *Feist Publications, Inc. v. Rural Telephone Service Co., Inc.*, 499 U.S. 340, 357 (1991).

15. In order to be eligible for copyright protection, a compilation must fall within one or more of the categories of authorship listed in section 102(a). 17 U.S.C. § 102(a); *Feist Publications, Inc. v. Rural Telephone Service Co., Inc.*, 499 U.S. 340, 357 (1991); Copyright Office Statement of Policy; 77 Fed. Reg. 37605-37608 (June 22, 2012).

16. Under the policy of the U.S. Copyright Office, "a claim in a compilation of exercises or the selection and arrangement of yoga poses will be refused registration. Exercise is not a category of authorship in section 102 and thus a compilation of exercises would not be copyrightable subject matter." Copyright Office Statement of Policy; 77 Fed. Reg. 37605-37608 (June 22, 2012).

17. Copyright registration is not a precondition to copyright protection. 17 U.S.C. § 408.

18. A certificate of registration of a copyright does not give rise to a presumption of validity of the copyright where the copyright was registered more than five years after the initial publication of the material. *Cf.* 17 U.S.C. § 410(c) ("In any judicial proceedings the certificate of a registration made before or within five years after first publication of the work shall constitute prima facie evidence of the validity of the copyright and of the facts stated in the certificate.").

19. Copyright registration is a precondition to filing an action for copyright infringement. 17 U.S.C. § 411; *see also L.A. Printex Industries, Inc. v. Aeropostale, Inc.*, 676 F.3d 841, 852 (9th Cir. 2012).

20. Because the undisputed facts demonstrate that the sequence of 26 yoga positions and two breathing exercises that is part of Bikram's Basic Yoga System (the "Sequence") is a process, system, or method of operation, the Sequence is not protected under copyright law.

21. Because the undisputed facts demonstrate that the sequence of 26 yoga positions and two breathing exercises that is part of Bikram's Basic Yoga System (the

"Sequence") is said to result in improvements in one's health or physical or mental condition, the Sequence is not protected under copyright law.

22. Because the undisputed facts demonstrate that the sequence of 26 yoga positions and two breathing exercises that is part of Bikram's Basic Yoga System (the "Sequence") is not an "original work of authorship" under 17 U.S.C. § 102(b), the Sequence is not protected under copyright law.

Dated: November 12, 2012

MAIER SHOCH LLP

By: [signature]
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